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A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in Tanzania

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1. INTRODUCTION

‘Juvenile justice is a core dimension of the rights of the child and a pivotal area where States’ commitment to children’s rights can be best expressed. We have a unique opportunity to promote a paradigm shift and help the criminal justice system evolve from an adult universe where children and adolescents hardly belong and where violence remains a high risk into an environment where children are seen as rights holders and are protected from all forms of violence at all times.’

Marta Santos Pais, the Special Representative of the Secretary-General (SRSG) on Violence Against Children speaking at an experts meeting held in January 2012 in Vienna to formulate and accelerate the adoption of effective measures to protect children within the juvenile justice system against all forms of violence.

Violence against children who are deprived of their liberty is a severe violation of their rights and is frequently invisible and under-researched. This is despite the fact that the 2006 UN Study on Violence found that children in care and justice institutions may be at higher risk of violence than nearly all other children.¹ It is very difficult to get a full and clear picture of the prevalence of violence against children in detention. Nonetheless, there is reliable and consistent evidence that children are at significant risk of violence in police and pre-trial detention in both developed and developing countries and that violence in these settings is widespread and in some cases normalised.

In the context of detention, violence against children can take many forms including torture, beatings, isolation, restraints, rape, harassment, self-harm and humiliation. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment states that ‘Violence in places of detention, including special institutions for children, is manifest in several ways, mainly through physical and sexual violence, as well as through verbal abuse. In addition, children are also subjected to violence as a result of conditions of detention, or as a form of discipline or punishment’.²

The World Health Organization (WHO) has stated that the impact of violence on children in the general population can have irreversible and life-long consequences: ‘it is associated with risk factors and risk-taking behaviours later in life. These include violent victimization and the perpetration of violence, depression, smoking, obesity, high-risk sexual behaviours, unintended pregnancy, and alcohol and drug use. Such risk factors and behaviours can lead to some of the principal causes of death, disease and disability – such as heart disease, sexually transmitted diseases, cancer and suicide.’³

States that are parties to the UN Convention on the Rights of the Child (CRC) have a clear obligation to take all appropriate legislative, administrative and educational measures to

¹ United Nations Secretary-General, *World Report on Violence against Children*, 2006, p175.

² *Sexual Violence in Institutions, including in detention facilities*, Statement by Manfred Nowak, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 2010.

³ WHO and the International Society for Prevention of Child Abuse and Neglect, *Preventing child maltreatment: a guide to taking action and generating evidence*, 2006.

protect children in detention from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment or exploitation, including sexual abuse.⁴ Furthermore, under Article 40 (1) of the CRC states are obliged to: 'recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society'. In their General Comment on Children's Rights in Juvenile Justice (General Comment No. 10) the CRC Committee asserts that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented.⁵ The right of children to freedom from violence is also found in the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Under Article 24 of the ICCPR, children enjoy the right 'to such measures of protection as are required by [their] statuses as minors'. In addition, both the ICCPR and CAT prohibit cruel, inhuman, or degrading treatment.

Penal Reform International (PRI) with the assistance of the National Organization for Legal Assistance (NOLA) has carried out a review that aims to increase our understanding of the specific legal and policy measures that can work to prevent and remedy violence against children in detention in Tanzania. This is part of a larger piece of work, which reviews legal and policy measures to prevent and remedy violence against children in detention in seven other countries, selected because they are countries where PRI has a presence and/or relative influence to follow up recommendations: Bangladesh, Georgia, Jordan, Kazakhstan, Pakistan, Russia and Uganda. For each country the review aims to:

- identify policy and legislative measures already in place to prevent and detect violence, to assist victims and to make perpetrators accountable;
- highlight significant gaps in provision; and
- make recommendations for improvements.

This report first describes the background to and methodology used in the review before summarising its key findings and recommendations for Tanzania.

⁴ Convention on the Rights of the Child (CRC), Article 19.

⁵ UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10 hereafter General Comment No.10, para 13.

2. BACKGROUND TO THE REVIEW

Definitions

For this review, children are defined as all those under 18⁶ and draws on definitions of violence provided by the CRC: ‘all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse’.⁷ This includes torture which is defined by the Committee on the Rights of the Child in a recent General Comment as ‘violence in all its forms against children in order to extract a confession, to extra-judicially punish children for unlawful or unwanted behaviours, or to force children to engage in activities against their will, typically applied by police and law enforcement officers, staff of residential and other institutions and persons who have power over children, including non-State armed actors’.⁸ The Committee on the Rights of the Child has emphasised that the term violence ‘must not be interpreted in any way to minimize the impact of, and need to address, non-physical and/or non-intentional forms of harm (such as, *inter alia*, neglect and psychological maltreatment)’.⁹

Methodology used

A list of indicators of law and policy measures that can prevent and respond to violence against children in detention were drawn up. These were based upon various sources including the report prepared by the Office of the High Commissioner for Human Rights (OHCHR), UN Office on Drugs and Crime (UNODC) and the SRSG on Violence against Children entitled *Joint Report on Prevention of and Responses to Violence Against Children within the Juvenile Justice System*. They were also based on the research plan used by UNICEF in the Central and Eastern Europe and the Commonwealth of Independent States (CEE/CIS) region supporting research into the torture and ill-treatment of children in the context of juvenile justice by looking at its prevalence, impact, prevention, detection, assistance and accountability. Please see Annex 1 for the indicators used which include:

- having systematic information and data gathering in place to determine the scale and character of the problem;
- having a comprehensive policy on children's law and justice that makes it clear that children in conflict with the law are rights holders, violence against children in detention is unacceptable, and that perpetrators will be held accountable;
- ensuring that deprivation of liberty is used as a measure of last resort by having in place an appropriate minimum age of criminal responsibility, diversion measures and alternative measures to detention;
- ensuring that children are detained for the shortest appropriate period of time by implementing effective legal limits on time spent in police and pre-trial detention;

⁶ CRC, Article 1.

⁷ CRC, Article 19.

⁸ UN Committee on the Rights of the Child (CRC), *General Comment No. 13 (2011): The right of the child to freedom from all forms of violence*, 18 April 2011, CRC/C/GC/13 para 26.

⁹ *Ibid.* para 4.

- protecting children when they are in detention by separating children from adults, having properly trained, qualified and remunerated employees working in detention facilities, and ensuring contact with families, lawyers and civil society;
- having an effective independent complaints and monitoring mechanism; and
- holding those responsible for violence against children accountable through investigation of allegations, prosecution of those implicated by the evidence, and imposition of proportionate penalties where applicable.

A desk review was conducted to assess whether the above pre-defined law and policy measures were in place in Tanzania and the extent to which the measures were implemented in practice, where such information was available. The research constituted an intensive literature search, review, and synthesis of relevant documents concerning Tanzania's current law and policy relating to the indicators identified. It drew upon a wide range of sources including information and reports from international NGOs such as UNICEF, UN and regional human rights mechanisms such as the Universal Periodic Review (UPR), National Human Rights Institutions, civil society and, in some instances, media reports. The findings and recommendations from the review were then distributed to NOLA, a national NGO working on children and justice in Tanzania, which then provided additional information on the topic, filled any remaining gaps and commented on the accuracy, credibility and relevance of the information provided.

This review focuses on police and pre-trial detention based on the assumption that these settings are particularly dangerous for children. Children can be vulnerable when in contact with the police: unreasonable force may be used in the course of arrest and during interrogations in order to force confessions; they may be held for lengthy periods of time alongside adult detainees; the arrest and placement of children in police detention may go unrecorded for some time, thereby providing law enforcement officials with a cloak of impunity; children can be very isolated at the police station; they may be denied access to legal representatives; and their families are often not told that their child has been arrested or where they are being held. Children in pre-trial detention are often at greater risk than those who have been convicted because they are held in the same overcrowded pre-trial detention facilities as adults, which can increase the risk of violence occurring.

The way in which girls and boys experience violence in detention can be different. Girls are always in the minority within criminal justice systems for children and require special protection as a consequence. As a result of their low numbers, many countries do not have special facilities for them and they are often held with adult women, which may increase the risk of physical and sexual abuse. Furthermore, they can be at risk of being held in isolation or far from their homes in order to keep them in institutions separate from boys. There may be a lack of female staff in facilities where girls are detained. Efforts were made to reflect these differences in the design of the desk review questions.

Challenges and limitations

This review is designed to provide a snapshot of the state of play of existing law and policy measures to prevent and reduce violence against children in Tanzania and as such provide a useful springboard for further action on the ground. However, it has limitations: for

example, it doesn't consider primary and secondary crime prevention measures for children; it doesn't examine violence by police which doesn't result in arrest and detention (for example against children living or working on the street); and doesn't look at law and policy in place for children who are in post-trial detention. It also does not cover administrative or immigration detention or detention of children who are held with their mothers.

This review is not original research and is therefore hampered by its reliance on secondary data sources on the issue. Although every effort was made by both PRI and NOLA to ensure its comprehensiveness, it is possible that key sources were not accessed. Despite these limitations, it is hoped that the report is a useful starting point for further action.

3. FINDINGS AND RECOMMENDATIONS

Evidence available on the issue

Number of children detained in police and pre-trial detention

During 2011, the Tanzanian National Human Rights Institution, the Commission for Human Rights and Good Governance (CHRAGG), conducted a series of monitoring visits to review the conditions for children in detention in Tanzania.¹⁰ During these visits they found a total of 80 children detained in pre-trial detention in Remand Homes and 56 held in post-trial detention in the Approved School. In addition they estimated that there are approximately 1,400 children held in adult prisons in pre- and post-trial detention in Tanzania. There are no figures available regarding the numbers of children detained in police stations.

To complement the CHRAGG's prisons inspection report, another study was commissioned in the same year by the Ministry of Constitutional and Legal Affairs (MoCLA) in collaboration with UNICEF¹¹, focusing on the treatment and experiences of children at all other stages of the criminal justice system.¹² In this study researchers sought to collect central level collated data and data from the entries in police log books in all of the sample regions on the number of children who were arrested in a 12-month period, disaggregated by age, gender and type of offence. Unfortunately, 'researchers were only able to collect quantitative data from the log-books of police stations in three out of the study's ten regions¹³: Lindi Urban, Dodoma Central and Tanga Urban Police Stations.'¹⁴ In addition, researchers were unable to collect data on the extent and nature of offending by children at the national level¹⁵; although official statistics indicate that offending children mostly commit theft, followed by housebreaking.¹⁶ The table below indicates criminal cases involving children dealt with by the police.

Table 1: Number of persons under 18 who have been arrested by the police due to an alleged conflict with the law (2008-2010) in Tanzania Mainland¹⁷

Reported cases	3,258
Sent to court	669
Convicted	428
Acquitted	411
Under investigation	664
Closed undetected	774

¹⁰ CHRAGG, *Inspection Report for Children in Detention Facilities in Tanzania*, 2011.

¹¹ The research was conducted by the National Organization for Legal Assistance (NOLA) based in Tanzania and the UK-based Coram Children's Legal Centre (Essex University)

¹² United Republic of Tanzania, *An Analysis of the Situation for Children in Conflict with the Law in Tanzania* Dar es Salaam, Ministry of Constitutional and Legal Affairs (MoCLA)/UNICEF, July 2011.

¹³ These Regions were Arusha, Dar es Salaam, Dodoma, Kigoma, Kilimanjaro, Lindi, Mbeya, Mtwara, Mwanza and Tanga.

¹⁴ United Republic of Tanzania, *An Analysis of the Situation for Children in Conflict with the Law in Tanzania*, Dar es Salaam, Ministry of Constitutional and Legal Affairs (MoCLA)/UNICEF, July 2011.

¹⁵ *Ibid.*

¹⁶ Reported in United Republic of Tanzania, *Consideration of the Second Periodic CRC Report: 1998-2003* answers to questions raised for additional and updated information considered in connection with the 2nd CRC report to the UN Committee on the Rights of the Child on 15th -19th May 2006.

¹⁷ Ministry of Home Affairs, Tanzania Police Force, December 2011.

No offence disclosed	66
No further action	246
Total arrested	3,258

Nature of offences for which children are arrested

Fifty per cent of the children arrested in a 12-month period in the three police stations in the MoCLA study were arrested for suspected theft or for another suspected minor property offence. Sexual offences were the second most common type of offence for which children were arrested, constituting 21 per cent. As the MoCLA study notes: 'a significant proportion of arrests for sexual offences was for statutory rape; that is, sexual conduct that is, in fact, consensual, but where one or both of the parties was below the age of consent at the time of the act.'¹⁸

The data provided in the MoCLA report also indicates that a significant proportion of children are arrested for public disorder offences, such as vagrancy, loitering, touting or for 'disrupting passengers'.¹⁹ Juvenile justice professionals across most districts also mentioned that it is not uncommon for children to be arrested for disorder offences and/or status offences, such as 'roaming around town', 'using abusive language', and so on. The report finds this to be a cause for concern in that: 'Offences such as vagrancy, loitering and truancy are often the result of poverty, lack of parental care and other socio-economic problems. They disproportionately affect vulnerable children, such as children living or working on the street.'²⁰ In fact, the Committee on the Rights of the Child has stated that these offences should not be criminalised but rather, dealt with through a State's child protection system, using measures that give 'effective support to parents and/or caregivers and measures which address the root causes of this behaviour.'²¹ According to Article 56 of the Riyadh Guidelines²²: 'In order to prevent further stigmatization, victimization and criminalisation of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalised if committed by an adult is not considered an offence and not penalized if committed by a young person.'

Location of detention facilities for children

At the same time, the juvenile justice system in Tanzania suffers from a scarcity of detention facilities for children who offend. This can be exemplified by the fact that the remand facilities for children are unevenly distributed – located in Arusha, Dar es Salaam, Kilimanjaro, Mbeya and Tanga regions only – with the central, western and north-western zones having no separate placements for children.²³ The first report released on the monitoring of the implementation of MKUKUTA [an acronym of the Kiswahili words: *Mkakati wa Kukuza*

¹⁸ United Republic of Tanzania, *An Analysis of the Situation for Children in Conflict with the Law in Tanzania*, Dar es Salaam, Ministry of Constitutional and Legal Affairs (MoCLA)/UNICEF, July 2011.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ UN Committee on the Rights of the Child, General Comment No. 10: *Children's Rights in Juvenile Justice*. CRC/C/GC/10, 25 April 2007, para. 9.

²² UN General Assembly, *United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines")*: resolution adopted by the General Assembly, 14 December 1990, A/RES/45/112

²³ United Republic of Tanzania, *Status Report 2006: Progress Towards the Goals for Growth, Social Wellbeing and Governance in Tanzania*, Dar es Salaam: Research and Analysis Working Group/MKUKUTA Monitoring System, Ministry of Planning, Economy and Empowering, 2006, p32; and Tume ya Haki za Binadamu na Utawala Bora, *Taarifa ya Ziara za Tume Wilayani na Ukaguzi wa Magereza na Vituo vya Polisi kwa Mwaka 2003/2004*. Op. cit.

Uchumi na Kuondoa Umasikini Tanzania, which in English means: National Strategy for Growth and Reduction of Poverty (NSGRP)] in December 2006 by the Research and Analysis Working Group (RAWG)²⁴, also notes that the administration of juvenile justice in the country is ‘lagging due to the lack of appropriate facilities; the central, western and north-western zones do not have separate placement for juvenile offenders.’²⁵ At the same time, there is only one Approved School (at Irambo in Mbeya region) and one Juvenile Court (at Kisutu in Dar es Salaam region) as illustrated by the table below.

Table 2: Number of institutions specifically for persons under 18, accused of, or recognised as having infringed the penal law

Facility	Number
Retention Home	5
Juvenile Court	1
Approved school	1
Total	7

This means that offending children in the central, western and north-western zones are processed in the adult criminal justice system and remanded or imprisoned in facilities with adult offenders,²⁶ which has a negative impact on the children’s well-being and welfare.²⁷

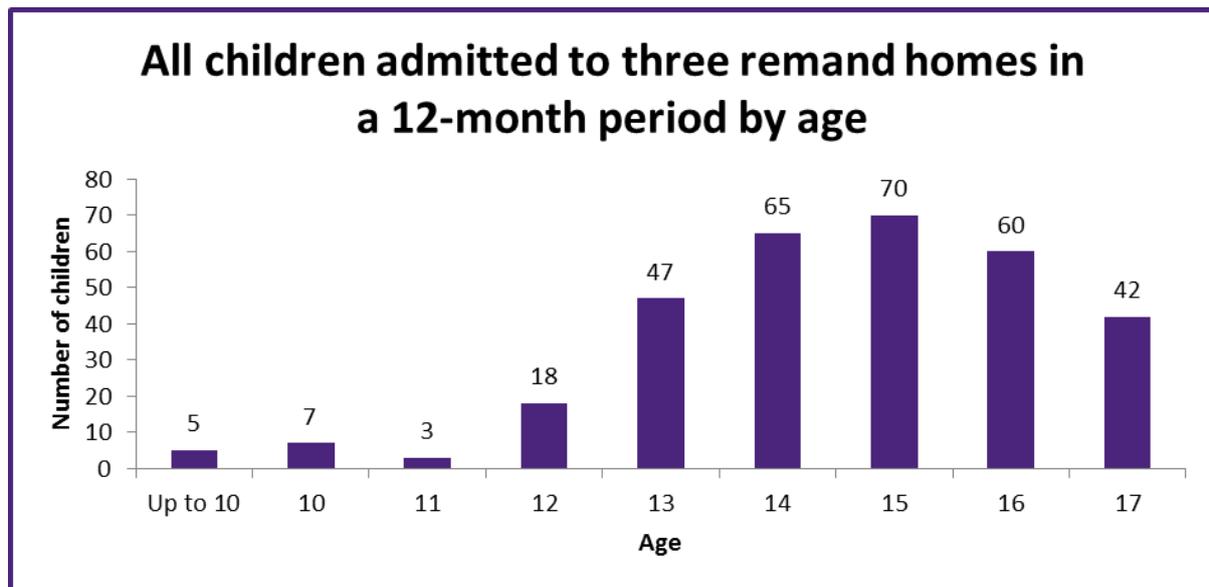
²⁴ The Research and Analysis Working Group (RAWG) was under the MKUKUTA Monitoring System, in the then Ministry of Planning, Economy and Empowering (MPEE), but is now under the Ministry of Finance.

²⁵ See United Republic of Tanzania, *Status Report 2006: Progress Towards the Goals for Growth, Social Wellbeing and Governance in Tanzania*, Dar es Salaam, Research and Analysis Working Group, MKUKUTA Monitoring System, 2006, p.27.

²⁶ Legal and Human Rights Centre, *The State of Juvenile Justice*, Dar es Salaam, 2003; and Tume ya Haki za Binadamu na Utawala Bora, *Taarifa ya Ziara za Tume Wilayani na Ukaguzi wa Magereza na Vituo vya Polisi kwa Mwaka 2003/2004*; *Ibid*, p15. This seems to be a common problem even in other East African countries, such as Kenya and Uganda. In Uganda, for instance, although the country’s Constitution provides [in Articles 34(6) and 93(6)] that child offenders kept in lawful custody or detention shall be kept separately from adult offenders and not to be remanded in adult prisons, in practice children in conflict with the law are detained in adult jails due to lack of sufficient child detention facilities. See particularly, African Child Policy Forum, *In the Best Interest of the Child: Harmonizing Laws in Eastern and Southern Africa*, Addis Ababa: African Child Forum/UNICEF, 2007, p87.

²⁷ For a detailed discussion on this issue, see particularly, Legal and Human Rights Centre, *The State of Juvenile Justice*, *Ibid*; Mashamba, CJ, *Fundamental Principles of Administration of Juvenile Justice and State Compliance with its Obligations under International Human Rights Instruments: The Case of Tanzania*. Op. cit; and Mashamba, CJ, *Emerging Issues in Diverting Juvenile Offenders from Criminal Justice System: The Socio-Cultural Realities, Economics and Politics of Administration of Juvenile Justice in Tanzania*. Op. cit.

Figure 1: Number of Children Admitted to Three Retention Homes in Months (2011)²⁸



What evidence do we have of prevalence of violence against children in police and pre-trial detention?

With regards to the prevalence of violence against children in police detention, CHRAGG found that 31 per cent of children reported being badly treated or subjected to violence by the police, with some children alleging that violence and torture was used to extract confessions. The CHRAGG assessment also refers to serious allegations of violence, abuse and sexual assault in pre- and post-trial detention facilities, primarily arising when children are held in adult prisons. Prison officials identified abusers as adult prisoners and fellow children; children also identified prison officers as abusers. Interviews with children showed that they were most vulnerable to sexual abuse at night, especially in prisons in which they are not separated from adults.

The MoCLA study also revealed a number of incidents of violations of children's rights during arrest and pre-trial detention in police stations as follows:

- *Children in conflict with the law indicated that there is a high number of incidences of police ill-treatment of child suspects.* Fifty-four per cent of children who gave this information (79 out of 154 children) reported that they had been mistreated by the police. This typically involved physical violence or, less frequently, threats of physical violence. Several children reported being beaten so badly that they required hospitalisation. Usually, the physical violence was for the purpose of attempting to extract a confession from the child.
- *A high percentage of children reported forced or attempted forced confessions.* Forty-seven per cent of children interviewed who gave this information (49 out of 104 children) reported that the police had forced or attempted to force them to sign a confession. Typically, this involved physical violence or threats of physical violence. Several children reported being made to sign a statement that they could not read.

²⁸ Ministry of Constitutional and Legal Affairs/UNICEF, *Analysis of the Situation for Children in Conflict with the Law*, July 2011.

- *Fabrication of allegations, particularly against vulnerable children, most notably, those without parental care and working children, was reported to be a problem.*²⁹ The allegation of case fabrications are supported by the very low number of guilty pleas that children enter at their initial hearings. Only 15 per cent of children interviewed (15 out of 102) reported that they had entered a guilty plea at their initial hearing.
- *Several children also reported having been arrested for one offence (eg a minor theft) and having a separate unrelated more serious offence 'pinned on them'.*
- *Children reported that they were not permitted to see visiting family members while they were in police detention, in violation of international law.* Children in all research regions stated that parents were permitted to attend the police station in order to drop off food, but were not allowed to have any physical contact or communicate with the child.
- *Conditions in police detention do not meet international standards, and are very damaging to the health and wellbeing of children.* Many of the children interviewed complained of very poor conditions in police detention, where the common complaints included: cells were very overcrowded and lacked proper ventilation, making it difficult to breathe; there was a lack of mattresses and bedding and mosquito nets; cells were very dirty and unsanitary, with no proper toilet and facilities and no place to shower; and that there was lack of food and water provided to children in some stations.
- *Most of the children interviewed reported that they understood why they had been arrested; however, several children stated that the police did not immediately inform them of the reasons for their arrest and that they found out some days after the arrest, while in police detention and being questioned, or at the initial Court hearing during which charges were laid.*

RECOMMENDATIONS TO IMPROVE EVIDENCE AND DATA GATHERING

- More studies must be undertaken to establish the extent of the problem.
- Tanzania needs to have more effective and more transparent data collection and publication on indicators that can help to address violence covering the following.³⁰
 - Time spent in detention before sentence
 - Time spent in detention after sentence
 - Number of child deaths in detention during 12 months
 - Percentage of children not wholly separated from adults

²⁹ It appears that, in these cases, police officers will, at times arrest and detain these children without carrying out any further investigation. They appear to take the statement of the complainant, arrest the child, hold him or her in police detention for a period and may then proceed to process the child through the criminal justice system. Some professionals reported that they suspected that the police accepted bribes in exchange for holding a child in detention in some cases.

³⁰ These indicators are based upon those recommended by UNODC and UNICEF in their *Manual for the measurement of juvenile justice indicators*, 2007, United Nations: New York; and also on indicators outlined in Detrick S, Abel G, Berger M, Delon, A and Meek R, *Violence against children in conflict with the law: A study on indicators and data collection in Belgium, England and Wales, France and the Netherlands*. Amsterdam, Defence for Children International, 2008.

- Percentage of children visited by family member in last three months
- Percentage who enter a pre-trial or pre-sentence diversion scheme
- Number of children in detention per 100,000 child population
- Number of child deaths in detention during a 12-month period, per 1,000 children detained
- Percentage of children in detention who are victims of self-harm during a 12-month period
- Percentage of children in detention who are victims of sexual abuse during a 12-month period
- Percentage of children in detention who have experienced closed or solitary confinement at least once during a 12-month period
- Existence of a system guaranteeing regular independent inspection of places of detention
- Existence of specialised standards and norms concerning recourse by personnel to physical restraint and use of force with respect to children deprived of liberty
- Existence of specialised standards and norms concerning disciplinary measures and procedures with respect to children deprived of liberty

The UNODC-UNICEF Manual suggests that data should be disaggregated by gender, ethnicity, offence and district of origin. It also suggests that data on juveniles deprived of liberty be disaggregated by the kind of facility in which they are confined. The proposed categories are police stations, juvenile detention facilities, 'juvenile rehabilitation facilities/schools' and 'prison', defined as a 'detention facility housing both children and adults'.

Use of detention as a last resort

Children should only be detained as a matter of last resort. Keeping children out of police and pre-trial detention in the first place will reduce the numbers of children exposed to violence in these settings.

Comprehensive law and policy on children in criminal justice

The development of a comprehensive law and policy on juvenile justice in line with the core elements set out in the Committee on the Rights of the Child's General Comment No 10 can help to construct a climate where children in conflict with the law are defined as rights-holders who are entitled to proportional and fair treatment in line with international human rights standards and to establish that detention should only be used as a last resort.

The Tanzania Law of the Child Act No. 21, 2009 (LCA) is of particular importance when considering the rights of children in conflict with the law. It enshrined child rights for the first time in national law, including a number of key international juvenile justice standards. Under the LCA, all persons under the age of 18 years are considered to be children and are therefore entitled to additional legal safeguards and to be treated differently from adults when they come into conflict with the law. While the LCA does not establish a separate

system for juvenile justice³¹, as required by international standards, it does establish a special court for the purpose of hearing and determining child matters which is known as the Juvenile Court. This Juvenile Court may dispose of all criminal cases involving accused children except homicide. It is worth noting the gap between the provisions of the LCA and reality on the ground. In spite of the LCA, children are still committed to adult prisons by courts. This creates significant problems since there is no law explicitly governing the treatment of children held in adult prisons and prisons are not set up to meet the specific needs of under-18s.

Minimum age of criminal responsibility

Setting the age of criminal responsibility as high as possible and no lower than 12 years (as recommended by the UN Committee on the Rights of the Child³²) is an important preventive measure since it reduces the number of children in detention overall. In Tanzania, no child under the age of 10 can be held criminally liable and a child between 10 and 12 years old may only be held criminally liable if the prosecution can demonstrate that the child was able to understand that what he was doing was wrong (*doli incapax* provision).³³ However, many children may not know their age. In Tanzania only 20 per cent of births are registered and only 6 per cent of children under the age of five years have a birth certificate³⁴, making age determination a big challenge for the justice system. A total of 27 out of 179 children who were interviewed during the CHRAGG inspection visits said that they were under 10 years of age at the time of arrest.

Abolishing status offences

Status offences include truancy, running away, violating curfew laws or possessing alcohol or tobacco. Such conduct would not be a criminal offence if committed by an adult but a child can be arrested and detained simply on the basis of their age. Status offences focus disproportionately on regulating the actions of girls as well as boys who are poor, disadvantaged or who work or live in the streets and therefore spend much of their time outside of the home. These offences should be abolished and the conduct should be addressed instead through multi-agency child protection mechanisms. This will ensure that children are not held in detention and exposed to the risk of violence for behaviour which does not represent a serious risk to the child or others.

The MoCLA report identified that a significant proportion of children are arrested for such offences as vagrancy, loitering, touting or for 'disrupting passengers', which are often the result of poverty, lack of parental care and other socio-economic problems. In addition, the NGO Caucus on Child Rights in Tanzania has highlighted the extent to which street children are rounded up and arrested on charge of begging and loitering. They have called for the repeal of the relevant law but in 2010 the High Court rejected this.³⁵

³¹ The LCA does not describe the procedure of arrest, search or investigation of crimes alleged to be committed by a child. As a result it is presumed that arrest, search or investigation of crimes would be dealt with as provided in the Criminal Procedure Act of 1985 (CPA).

³² General Comment No 10, para 32.

³³ Sections 15(1) & (2) of the Penal Code.

³⁴ UNICEF, *Children and Women in Tanzania (SITAN)*, 2010.

³⁵ http://www.crin.org/docs/status_offences_final.pdf (accessed 17 October 2012)

Diversiónary measures

Sections 116, 118 and 119 of the LCA set out alternative measures that can be imposed by judges before trial, including discharging the child without making any order.

Alternatives to pre-trial detention

Keeping children out of pre-trial detention in the first place will reduce the numbers of children exposed to violence in these settings. Section 104 of the LCA allows for Juvenile Courts to use alternatives to detention while the child is awaiting trial: 'Where a Juvenile Court remands a child or commits a child for trial before the High Court and the child is not released on bail or is not permitted to go at large, the Juvenile Court may, instead of committing the child to prison, order him to be handed over to the care of the Commissioner, fit person or institution named in the order'.³⁶

RECOMMENDATIONS TO ENSURE DETENTION IS USED AS A LAST RESORT

- Steps must be taken to implement the LCA nationally, including increasing awareness of its provisions among the police, judiciary, prosecutors and other professionals.
- All children currently held in adult prisons should be removed with the utmost expedience to a remand home or place of safety in conformity with the LCA.
- It is strongly recommended that Section 15(2) of the Penal Code is amended to abolish the rebuttable presumption of *doli incapax* for 10- to 12-year-olds, and 12 years is set as the absolute minimum age of criminal responsibility.
- Birth registration must be encouraged across the country and proper age determination procedures established and implemented in the Court system.
- Status offences such as begging and prostitution should be identified as welfare issues and children engaging in these activities should be dealt with by the child protection system and not the child justice system.
- Measures for diverting children out of the formal justice system, such as the use of cautions, mediation and alternative dispute resolutions should be implemented. Police and prosecutors should be trained in these methods.
- Legislation should be introduced that imposes greater restrictions on the use of pre-trial detention so it is only used as a last resort and for the shortest possible period of time where there is a risk of absconding and/or if a child is a danger to themselves or others.

Detention for the shortest possible time

Limiting time in police detention

The UN Committee on the Rights of the Child has indicated in General Comment No 10 that no child should be detained by the police for more than 24 hours without a judicial order. The longer the period spent in police custody without the knowledge of the court system and possibly without the knowledge of family or guardian, the greater the risk of violence taking place.

³⁶ Bail by the Primary Court and High Court is also dealt with in Sections 148-163 of the CPA.

Under Section 101 of the LCA, a child should be brought before a Juvenile Court immediately or released on police bail unless it is a serious offence or would 'undermine justice' to do so. In these circumstances police must bring the child before a Juvenile Court 'not later than the first sitting of a court in the locality.' The CHRAGG assessment found that 37 per cent of the 179 children who were interviewed were held in detention in police stations for more than four days. A further 33 per cent revealed that they had been held for between two and three days, and only 30 per cent said that they had been held within a 24 hour time period. This indicates that about 70 per cent of children sent to police stations are detained for more than 24 hours before being sent to the courts.

The MoCLA report concurred with information provided by CHRAGG that some children spend long periods of time in police detention after committing very minor offences, such as minor theft and minor disorder offences. It was found that police do not always adhere to the 24-hour time limit on police detention. Seventy-nine per cent of children interviewed (114 out of 145) reported the length of time they were held in police detention was beyond the 24-hour statutory maximum time limit, and 73 per cent were held beyond 48 hours. A significant number of children were held for very long periods of time. Twenty-three children were held for between seven days and two weeks, and 13 children reported being held for one month or more in police detention.³⁷

Limiting time in pre-trial detention

The maximum time spent in pre-trial detention should be no longer than six months according to international standards. Enforcing time limits will ensure that the numbers of children in pre-trial detention are reduced and therefore the risk of violence is lessened. Detention should be reviewed at least every 14 days.

Section 104 of the LCA and Section 225 of CPA allows a court to adjourn the case and remand a person into detention. This detention must be reviewed every 15 days by the court. Generally the maximum period that the case can be adjourned for is 60 days³⁸, but in exceptional circumstances this can be extended for up to two years.³⁹ In theory, the court system in Tanzania has mechanisms which should ensure that cases are heard in a timely fashion. There is an established Case Flow Management Committee in each region to ensure that cases are tracked and followed promptly. Also an accelerated trial procedure has been introduced in the CPA.

Children who are charged with major offences like murder and armed robbery are often spending more than two years in detention facilities pending the hearing of their cases. Children charged with minor offences spend shorter times in pre-trial detention, but often longer than the 60 days permitted by law. Several factors were found to contribute to the delays: delays in investigation of the case; failure by police and prison authorities to bring children to the court due to lack of transportation; and frequent adjournment of cases due to

³⁷ Police officers who were interviewed reported that investigation at times takes a long time to conduct, particularly for more serious offences, and children are held in police detention until it is decided whether to lay charges. A lack of oversight and low awareness of the law among children also contribute to children being held beyond the 24-hour time limit in police detention.

³⁸ Section 255(4)(a) of the Judicial Service Act requires a magistrate or judge to pronounce judgment within sixty days.

³⁹ Section 255(4)(c) CPA.

a lack of primary court magistrates especially in rural areas. There are no sanctions put in place against courts or prison authorities who fail to bring a child before the court at the required date and time.

RECOMMENDATIONS

- The time limit of 24 hours for detaining a child in police custody must be strictly enforced.
- The length of time children can be held in pre-trial detention must be limited by legislation in order to ensure that children are only deprived of their liberty as a last resort and for the shortest possible period of time and where there is a risk of absconding and/or if a child is a danger to themselves or others.
- Legislation should be enacted to provide redress to children who have been wrongfully detained beyond the time limit of 24 hours, including compensation for any harm caused to such children.

Prevention measures at the police station

Proper registering of detainees within a time limit

Registering of detainees is an important preventive measure since it establishes that the police station has responsibility and is accountable for the treatment of a child detainee. Neither the LCA nor other relevant legislation stipulates that police stations must register a child's details on arrest. However, police officers are obliged to notify courts when they have arrested a person without warrant.

Access to medical care

Children should have access to medical treatment if they have been injured or are in a state of psychological trauma. Under the Tanzanian Criminal Procedure Act, a police officer must make reasonable efforts to provide medical care to those under arrest who ask for it or who appear to require it.

Specialist police officers to deal with children

International standards⁴⁰ encourage specialisation within the police to deal with child offenders and a child should be referred to the relevant specialised officer as soon as possible following arrest. Police officers reported to CHRAGG that some initiatives to establish specialism had been introduced and officers were assigned to Gender and Children's Desks and in that role are supposed to deal with the preliminary investigation for cases of children in conflict with the law and regarding contact with their families. It is not clear how extensive this practice is throughout the country. The Attorney General has also established a specialist children's desk.⁴¹

⁴⁰ Beijing Rule 12.1; Riyadh Guideline 58.

⁴¹ Five Year Strategy for Child Justice Reform, Child Justice Forum, 2011, p22.

Protection from abuse when taking samples and during searches

The process of taking samples and searching children in order to obtain evidence or for security purposes can be abused by police. The UN Study for example found that male staff often engage in 'sanctioned sexual harassment such as improper touching during searches'. The international instruments do not provide any specific protection for children in the course of searches although Rule 10.3 of the Beijing Rules requires contact between law enforcement officials and children to be managed in such a way as to respect the legal status of the child, promote the well-being of the child and avoid harm to him or her. This could be read to imply that a child in detention should only be searched by an officer of the same sex. Intimate searches (such as taking of blood, saliva or pubic hair) should only be taken in limited circumstances and carried out by a medical practitioner.

The Criminal Procedure Act requires that a woman should be searched by another woman 'with strict regard to decency'. However, this is a search conducted during arrest rather than whilst in detention and does not specifically take the rights of children into account. There is no reference to intimate samples in the Criminal Procedure Act. Police may take 'measurements, prints, recordings, photographs or samples of handwriting' without consent. These will be destroyed if the case does not proceed or the person is acquitted but again no specific provision is made regarding children.

Separation from adults during police detention

Section 102 of the LCA stipulates that children should be held separately from adults while in police custody. However, out of the 30 police stations visited during the CHRAGG assessment, only four had a separate cell where children could be detained. The MoCLA report found that most children are not separated from adults in police detention⁴², in contravention of international law. Although many children reported that they were not mistreated by adult detainees, several children reported being slapped or hit, and one child reported an attempted sexual assault by an adult detainee.

Presence of lawyers, parents and others during questioning

Article 37(d) of the CRC requires states to provide children with 'prompt access to legal and other appropriate assistance'. The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems assert that states should establish child-friendly legal aid systems that 'enable children, who are arrested, deprived of personal liberty, suspected or charged with a crime, to contact their parents/guardians at once and to prohibit any interview in the absence of a parent/guardian, and lawyer or other legal aid provider. Such contact with the outside world can be a vital preventive mechanism and can also be an opportunity for children to report violence.

To promote parental involvement, parents must be notified of the apprehension of their child as soon as possible.⁴³ Section 56(1) of the Criminal Procedure Act requires the police who are investigating an offence committed by a child to inform the parent or guardian of the child about the arrest and the offence he or she is charged with. However, in this Act a 'child' or 'juvenile' is defined as someone under 16 so does not protect 16-18 year olds and nearly all of the children who were interviewed in the MoCLA report were not aware of their rights to a

⁴² Children in the study districts were generally detained in the same police cells as adult offenders.

⁴³ General Comment No 10, para 54.

legal representative, or to contact their relatives. Furthermore, the CHRAGG assessment found that 42 per cent of children said they were not given a chance to contact their relatives upon arrest whilst 44 per cent said they were allowed to contact their relatives. The Child Justice Forum conclude that: 'Children are generally not accompanied by a parent, or any other adult, when they are questioned by the police for an alleged offence. Parents are often not informed or are given insufficient time to come to the police station. As a result, there is nobody present to support the child and ensure the questioning is fair and not oppressive and that the child understands what is being asked by the police.'⁴⁴ This was echoed by the MoCLA report which found that of those children questioned, almost all reported that no appropriate adult was contacted at the time of their arrest, or present during their questioning. Only eight per cent of children who gave this information (13 of 154 children) reported that an adult was present at the station immediately following their arrest, and only six per cent (nine of 154 children) reported that an adult was present during questioning. The adults present in these instances were family members. However, most of the family members were also the complainants, which is highly problematic. Children should have access to a lawyer and/or an independent appropriate adult during questioning and this adult should not be the complainant, even if the complainant is a parent.

None of the children who were interviewed reported having access to a lawyer at the police station and during questioning, and none reported having a social work officer contacted following their arrest and present during their questioning. Where parents are not available or cannot be contacted, police officers should immediately inform a social work officer to ensure that an appropriate, independent adult is present at the station during a child's questioning. There appears to be a lack of understanding among social work officers and police officers about the role of social work officers in the juvenile justice system, and police officers may not feel that there is a need to contact a social work officer, even when a child does not have any relatives present at the station. Where social work officers are contacted, it may not be for the purposes of ensuring that a child has an appropriate adult present during questioning, but because a decision has been made not to lay charges.

The exception to this appears to be Hai, where Police routinely contact social work officers when a child is arrested. This was attributed to the establishment of the Child Protection District Team, which appears to have improved coordination and cooperation between police and social work officers.

While Section 99(1)(f) of the LCA provides that a child has the right to be represented in the Juvenile Court by an Advocate, it is silent on the question of whether children have the right to legal representation at the police station. However, Section 54(1) provides an arrested person with the right to contact his or her lawyer. According to CHRAGG, in practice only 22.35 per cent of the children interviewed during inspection visits said that they had legal representation whilst they were held in police detention. Nearly 59 per cent said they did not have contact with a lawyer, whilst the remainder did not know.

To put these figures into context, 75 per cent of Tanzania's population lives in rural areas and there are only 1,135 lawyers to service a population of 42 million.⁴⁵ The Tanzanian

⁴⁴ Five Year Strategy for Child Justice Reform, Child Justice Forum, 2011, p42.

⁴⁵ Figures cited in UNODC Survey report on access to legal aid in Africa, 2011.

Women Lawyers Association estimates that 13 regions (out of 21) in Tanzania have no lawyers at all. At the same time there is growing demand for paralegals of which there are 2,500 in Tanzania.⁴⁶

RECOMMENDATIONS TO PREVENT VIOLENCE AT THE POLICE STATION

- Proper procedures for registering children and admissions at the police station should be developed and implemented.
- Proper procedures should be in place to ensure that a child is given access to medical care at the police station.
- Clear guidance for police should be enacted regarding the taking of samples and undertaking of searches ensuring that it promotes the well-being of the child and avoids harm to him or her. A child in detention shall only be searched by a police officer of the same gender and intimate searches should only be carried out in limited circumstances and where safeguards are in place to protect the child.
- The law enforcement agencies should have specialised child units and well trained child justice personnel to deal with children who come into contact with law enforcers or law enforcement agencies.
- Children must be separated from adults at all points of detention or deprivation of liberty (including during transportation to court or other facilities), including police and pre-trial detention.
- Given the very low minimum age of criminal responsibility, efforts should be made to separate older and younger children whilst held in detention. Similarly, boy and girl children must be properly separated whilst in detention in police cells.
- Policy and regulations should be developed that require the presence of legal assistance and the mandatory presence of a parent/guardian/legal representative/appropriate adult/ para-social worker during the interrogation of a child at a police station.

Prevention measures during court proceedings

Support from social workers/probation officers to identify alternatives to pre-trial detention

Section 111 of the LCA states that when sentencing, information regarding 'character, antecedents, home life, occupation and health' should be taken into account to ensure the case is dealt with 'in the best interests of the child'. A child may be either remanded or bailed pending obtaining this information or sent for 'special medical examination'. The LCA establishes juvenile courts but only one in Dar es Salaam has been designated so far.⁴⁷

There is also a significant shortage of social welfare officers in most districts and the CHRAGG inspection visits found that very few children had access to social welfare officers

http://www.unodc.org/pdf/criminal_justice/Survey_Report_on_Access_to_Legal_Aid_in_Africa.pdf (accessed 17 October 2012).

⁴⁶ *Ibid.*

⁴⁷ Information from Five Year Strategy for Child Justice Reform, Child Justice Forum, 2011, p22.

who could be responsible for preparing a social investigation report to be used to inform sentencing or pre-trial detention decisions. In most cases magistrates are forced by circumstance to order custodial sentences owing to a lack of probation officers and social welfare officers to deal with children.

Provision of legal assistance during court proceedings

Section 99 (1)(f) of the LCA provides that a child shall have the right to be represented in the Juvenile Court by an advocate. Section 3 of the Legal Aid (Criminal Proceeding) Act states that: 'Where in any proceeding it appears to the certifying authority that it is desirable, in the interests of justice, that an accused should have legal aid in the preparation and conduct of his defence or appeal, as the case may be, and that his means are insufficient to enable him to obtain such aid, the certifying authority may certify that the accused ought to have such legal aid and upon such certificate being issued the Registrar shall, where it is practicable so to do, assign to the accused an advocate for the purpose of the preparation and conduct of his defence or appeal, as the case may be'.

In practice, legal assistance and representation is only available for free to defendants accused of murder and capital offences, such as treason. There are various NGOs which provide free legal assistance in certain cases, such as NOLA, the Legal and Human Rights Centre, and the Tanganyika Law Society. However, this level of legal assistance is not sufficient to cover the demands for legal aid across the country. In addition, there is a severe lack of qualified lawyers in the country, and the majority of lawyers are based in Dar es Salaam and Arusha.

Exclusion of evidence obtained through torture or threats

Courts which allow evidence that has been obtained through torture or threats add to the problems of impunity that make these practices so common in the investigation phase of the juvenile justice system. The Tanzania Evidence Act 1971 regards a confession obtained by torture, coercion or undue influence as inadmissible as evidence.⁴⁸ The sanctions for violating this are not known.

RECOMMENDATIONS FOR COURTS

- More juvenile courts should be created that can hear children's cases on a priority basis.
- Provisions of the LCA regarding legal representation must be implemented.
- Courts must be supported in their decision-making by social workers, probation officers or other suitable persons who can liaise with family and community and identify community-based alternatives to pre-trial detention.
- Clear legal provisions should be adopted that prescribe measures to be taken by courts should evidence appear to have been obtained through torture or ill-treatment.

Prevention measures in pre-trial detention facilities

Separation from adults in pre-trial detention

⁴⁸ Section 29, Evidence Act, 1971.

Children may not be imprisoned according to the LCA and so in theory the issue of mixing with adults should not arise. In practice the CHRAGG assessment revealed that approximately 1,400 children are held in adult prisons. Over 90 per cent of these children were in pre-trial detention and the vast majority were boys. They fall between the gaps in the law and have no additional protections required because of their age since in theory they should not be in prison at all.

Regular visits by parents/guardians/family members and others

Section 132(1)(c) of the LCA empowers the Minister for Health and Social Welfare to make rules which regulate visits of parents, guardians and relatives to the Retention Homes and Approved School. In essence children are allowed to communicate with their families and friends provided that this communication does not infringe on the institution's peace and security.

Specialised standards and norms concerning disciplinary measures and procedures with respect to children in pre-trial detention

In the Retention Homes and Approved School, discipline is controlled by each facility's authority.⁴⁹ The available disciplinary measures in the Approved School and Retention Homes differ from those in adult prisons. In Upanga Retention Home it was stated that where the offender is a fellow child, then common punishments are to clean the dormitory, wash dishes or perform harder exercises. At Segerea prison three punishment facilities were observed in the boys' dormitories where children are placed in solitary confinement.

Procedural rules regarding searches of children which respect their privacy and dignity

Under Rule 26 of the Criminal Procedure Act, 'whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency'. No provision is made for children specifically.

Appropriately qualified, trained and remunerated staff

According to the UN Study: 'Unqualified and poorly remunerated staff are widely recognised as a key factor linked to violence within institutions'. The inspection visits revealed that there is a scarcity of professionals trained to deal with children and little coordination between District Social Welfare Officers, District Medical Officers and Prison Officers. In the Retention Homes and the Approved School there were few social workers and sometimes none at all; for example there was just one social worker at Irambo Approved School and three para-social workers.

Implementation of a clear child protection policy, with step-by-step procedures on how allegations and disclosures of violence are to be handled by institutions

Institutions where children are detained do not have a clear overarching child protection policy that includes a clear statement that every child has the right to be protected from all

⁴⁹ Under Section 122 of the Law of the Child Act, the Minister established a Board of Visitors whose duty is to maintain discipline as stipulated under Section 123(1)(e).

forms of violence, abuse, neglect and exploitation, and it is the duty of every police officer and detention facility employee to ensure that children are so protected and where everyone has a duty to immediately report any concerns, suspicions or disclosures of to the appropriate authorities. Rules and regulations for remand homes have been drafted and await adoption.

RECOMMENDATIONS TO PREVENT VIOLENCE DURING PRE-TRIAL DETENTION

- Amendments to legislation should be made that explicitly require the separation of girls and boys and adults at all points of detention or deprivation of liberty (including during transportation to court or other facilities), including both police and pre-trial detention. Boys must be held separately from girls, and children in pre-trial detention should be held separately from children who have been convicted.
- Regulations relating to visits by parents, family members and others to children in detention should be developed taking into account the following issues.
 - The Havana Rules state that they should occur ‘in principle once a week and not less than once a month’.⁵⁰
 - Children should have access to appropriate facilities to maintain contact with relatives and significant others, such as comfortable private space to conduct visits.
 - Children should be placed in a facility that is as close as possible to the place of residence of his or her family.⁵¹ To ensure that children are able to be placed near their families, the Havana Rules encourage states to decentralise institutions.⁵²
 - Children should be provided with help in communicating with their families and their right to privacy should be respected.⁵³
 - Children should be allowed to communicate with other persons or representatives of reputable outside organisations who can help to expand the range of activities and support that the child can access while detained, supporting their development and encouraging their reintegration into society.
- Specific regulations must be drawn up and implemented concerning the use of disciplinary measures in all detention facilities where children are held. This must be in line with the Havana Rules and in particular must prohibit corporal punishment, solitary confinement and restriction or denial of contact with family members. These regulations must be known about by children and staff.
- Staff should be carefully selected, undergo criminal record checks, receive appropriate training and necessary supervision, be fully qualified, and receive adequate wages.
- Staff must be trained in: child rights and non-violent disciplinary measures; to immediately report any concerns, suspicions or disclosures of violence against children to the appropriate authorities; and all the provisions outlined in the LCA and other relevant legislation as well as the relevant international standards.

⁵⁰ Havana Rules, Rule 60.

⁵¹ General Comment No 10, para 60.

⁵² Havana Rules, Rule 30.

⁵³ Havana Rules, Rule 61 and 87 (e).

- The use of any form of corporal punishment or physical violence by staff against a child in detention should be prohibited in law and staff should face severe sanctions for using violence against children in detention.
- A clear child protection policy should be established with step-by-step procedures on how allegations and disclosures of violence are to be handled by institutions. Implementation of this policy should be reviewed at regular intervals. Children should be aware of its provisions through child-friendly documents.
- A child protection module should be included in the curriculum for newly recruited staff.

Independent monitoring of police and pre-trial detention facilities

According to the UN Rules for the Protection of Juveniles Deprived of their Liberty duly constituted authorities independent from the institution should undertake inspections on a regular basis, with unannounced inspections on their own initiative. Such inspections can play an important role in preventing violence as well as providing avenues for children to bring violence to the authority's attention.

Relevant international and regional human rights instruments ratified and cooperation with UN special procedures

Tanzania has ratified the CRC, ACRWC, ICCPR and ACHPR all of which contain provisions on the prohibition of torture, and is obliged to harmonise national legislation with these treaties. It has not ratified the CAT or OPCAT. It has not received a visit from the UN Special Rapporteur on Torture.

Is there a system guaranteeing regular independent inspection of places of detention?

In Tanzania, there are a number of bodies mandated to inspect and monitor places where children are deprived of their liberty (either lawfully in Approved Schools or Retention Homes or unlawfully in Prisons or in Wami Young Offenders Institute for 18-21 year olds):

1. CHRAGG has the mandate to investigate all human rights abuses and to visit prisons, Retention Homes, Approved Schools, and police stations.⁵⁴
2. Boards of Visitors, which must be established at each Approved School.
3. Commissioners for Social Welfare, who have the mandate to inspect any approved residential home or institution, including Retention Homes and Approved Schools.
4. Director of Public Prosecutions has the power to inspect police cells, prisons, and Retention Homes.
5. Visiting Justices, who can visit all prisons under their jurisdiction.

An amendment to the CHRAGG Act No.7 of 2001 indicates that CHRAGG can make unannounced visits to places of detention, as it states 'An Assistant Commissioner or a representative of the Commission shall...make such on-the-spot investigation as may be

⁵⁴ Section 6 (1) (h) of the Commission for the Human Rights and Good Governance Act No, 7 of 2001 gives the Commission the power to visit prisons and places of detention or related facilities with a view to assessing and inspecting conditions of persons held in such places and making recommendations in relation to protecting their human rights.

necessary'.⁵⁵ The CHRAGG inspection teams contain both men and women. The situation for other inspection bodies is not known.

RECOMMENDATIONS TO ENSURE INDEPENDENT MONITORING

- CHRAGG should increase its ability to address children's complaints and investigate child rights violations. Ensure that independent inspections and monitoring of detention facilities by qualified bodies take place on a regular basis, at times unannounced, with full access to the facilities and freedom to interview children and staff in private.
- It is recommended that Tanzania take steps to sign and ratify the OPCAT.

Measures to ensure accountability

Under international human rights law, Tanzania is obliged to thoroughly and promptly investigate allegations of violence (including the use of torture) against children in police and pre-trial detention, prosecute those implicated by the evidence, and, if their guilt is established following a fair trial, impose proportionate penalties. Implied in this is that the children concerned should have the opportunity to assert their rights and receive a fair and effective remedy, that those responsible stand trial, and that the victims themselves obtain reparations.

In the first instance there should be clear avenues for children to make complaints of ill-treatment whilst in detention. The MoCLA report found that 'children in conflict with the law indicated that there are no complaint procedures where there are incidences of police ill-treatment of child suspects.'⁵⁶ Most children were not aware of how to complain about police ill-treatment, and some reported that they were afraid of the police and therefore, would not complain even if they knew the procedures. Several children who had complained reported that nothing had been done following their complaint. The official procedure for handling complaints in police stations is not known.

In the detention facilities this is regulated by the Prison (Prison Offences) Regulations, 1968. The procedure requires the settlement of disputes in an amicable manner unless such disputes involve a criminal offence. In every visited prison and Retention Home, there are prisoners' leaders named 'Nyapara' in Swahili who are prisoners appointed as immediate supervisors of their fellow prisoners. Their duty is to ensure peace and security among themselves, to receive individual complaints and forward them to the Officer-in-Charge of the prisoner for adjudication. However, there is no defined appeal procedure for when a prisoner is aggrieved with the decision of the Officer-in-Charge of the prison. It was also found in Kilosa and Morogoro Prisons that sometimes the 'Nyapara' punish their fellow prisoners without forwarding the complaints to the Officer-in-Charge. However, the situation is different

⁵⁵ Amendment of Section 13 (4)(c), Commission for Human Rights and Good Governance (Amendment Act) No.16 of 2001.

⁵⁶ The limited access that children have to lawyers or other professionals to assist them during police detention and monitor their treatment and the lack of any adults present during questioning appears to make children very vulnerable to mistreatment.

in the Retention Homes and Approved Schools where matrons and patrons are used, who are qualified social welfare officers and therefore usually able to handle complaints of children in a more appropriate way.

Torture is clearly prohibited under national law. Article 13(6)(e) of the Constitution of the United Republic of Tanzania prohibits any kind of torture. Section 55(1) and (2) of the CPA prohibits torture of any person under restraint. Furthermore, under Article 13 of the LCA torture or other cruel, inhuman punishment or degrading treatment against children is prohibited. The challenge of course is for prosecution to take place.

RECOMMENDATIONS TO COUNTER IMPUNITY

- Ensure that allegations of violence and ill-treatment including torture are impartially and adequately investigated.
- It is recommended that an independent body for receiving and processing complaints by children in detention be established in order for any instances of abuse, ill-treatment or torture to be properly reported and followed-up. The LCA should be amended to include clear complaint mechanisms for child victims of abuse while in police and pre-trial facilities.
- Public awareness should be enhanced to ensure that members of the public are capable of reporting cases of violence against children while in police custody and pre-trial detention facilities.

ANNEX 1. COUNTRY STUDY TEMPLATE

INFORMATION REQUIRED FOR COUNTRY STUDIES ON LAW AND POLICY MEASURES TO PREVENT AND REMEDY VIOLENCE AGAINST CHILDREN DURING POLICE AND PRE-TRIAL DETENTION

1. Baseline information

NB where possible this information should be disaggregated by gender

- The number of children arrested within 12 months per 100 000 child population
- The number of children in detention per 100 000 child population
- The number of children in pre-trial detention per 100 000 child population
- Time spent in detention before sentence
- Time spent in detention after sentence
- Number of child deaths in detention during 12 months
- Percentage of children not wholly separated from adults
- Percentage of children visited by family member in last 3 months
- Percentage of children receiving a custodial sentence
- Percentage who enter a pre-trial or pre-sentence diversion scheme
- Percentage of children in detention who are victims of self-harm during a 12-month period
- Percentage of children in detention who are victims of sexual abuse during a 12-month period
- Percentage of children in detention who have experienced closed or solitary confinement at least once during a 12-month period
- Percentage of children released from detention receiving confidential exit interviews by independent authority

2. Overarching law and policy

- Is there a comprehensive law and policy on juvenile justice in line with the core elements set out in Committee on the Rights of the Child General Comment no 10?

3. Measures in place to reduce the number of children in detention overall

- Are status offences and minor offences such as begging or loitering decriminalised?
- Are there any status offences/minor offences which particularly impact on girls?
- What is the age of minimum criminal responsibility?
- What is the minimum age at which children can be detained in custody?
- What provision is there for children with mental health problems to be dealt with outside the criminal justice system?
- What is the availability and use of pre-trial and pre-sentence diversion.
- Does the use of pre-trial and pre-sentence diversion differ for girls and boys?

4. Measures in place to protect children from violence at the police station

- Are there alternatives to arrest such as issuing a police warning/caution or written notice to appear?

- What are the legal requirements regarding the presence of lawyers, appropriate adults, parents or guardians during questioning in a police station? What are the sanctions for breach of these requirements?
- Does the law limit the period that a child may be held by the police for questioning without a judicial order to 24 hours, as recommended by the Committee on the Rights of the Child? If not, how long may the police keep a child in detention for purposes of questioning without a court order?
- What are the legal provisions for children to have access to medical care whilst detained by the police?
- Is there provision for a child to be handed over to a specialised police official as soon after arrest or apprehension as possible?
- Do procedural rules regarding searches of children respect their privacy and dignity, and ensure that intimate searches are only authorised in narrow circumstances and carried out by a medically trained person of the same sex unless delay would cause harm to the child?
- Do procedural rules regarding the taking of intimate and non-intimate samples for evidence include rules relating to consent, and to the retention of such evidence?
- What do rules of evidence say regarding the submission of any statements or evidence that are not gathered in compliance with law or policy, and what are sanctions for officers regarding failures arising from this?
- Is there law and policy setting out appropriate physical conditions for police holding cells that accommodate children and which take into account the requirements of boys and girls?
- Do police station registers indicate the child's details (including age) and the time of arrest/apprehension and are these registers open to inspection by lawyers, social workers and independent monitoring bodies?

5. Measures for protecting children being brought before the court for the first time

- Are children brought before a court/tribunal (or the appropriate forum) for consideration of release as soon as possible but within 24 hours of arrest or apprehension?
- What are the sanctions against those responsible if there is a delay in coming before court?
- Law and policy regarding transporting children to court (ie separate from adults, girls separate from boys, and not handcuffed except in tightly-prescribed exceptional circumstances).
- Law and policy regarding accommodation of children at court, ie kept separate from adults and girls separate from boys.
- What are the legal requirements regarding the presence of lawyers, appropriate adults, parents or guardians during court appearances? What are the sanctions for breach of these requirements?
- Is the possibility of diversion or other alternative measures considered at the first appearance?
- If the case is not to be diverted, then are alternative measures to detention considered eg unconditional or conditional release into the care of

parent/guardian/other appropriate adult, close supervision in the community, foster care etc?

- Are courts allowed to use evidence that has been obtained through torture or threats to be presented to the court or used against a child to lead to a conviction?

6. Measures to reduce the numbers in pre-trial detention

- Law and policy regarding use of alternative measures to detention eg diversion/ referral to restorative justice programmes.
- Alternatives to pre-trial detention eg care of parent/guardian/suitable adult, close supervision, foster care etc.
- Law and policy regarding maximum period in pre-trial detention (Committee on the Rights of the Child recommends no longer than six months).
- Frequency that detention is reviewed.
- Support from social workers/probation officers to identify alternatives to pre-trial detention
- Are regular visits to the child in detention by parents/guardians/responsible adults permitted?

7. Measures to control and reduce the use of restraint by staff members working in institutions where children are detained

- Are there specialised standards and norms concerning disciplinary measures and procedures with respect to children in police and pre-trial detention? What are they?
- What is the percentage of children in detention who have experienced a disciplinary measure at least once during a 12-month period? (disaggregate by sex where possible)
- What are the sanctions for use of prohibited measures or where measures are used outside the restrictions used by law?

8. Measures to control the use of illegal violence by staff members

- What are the sanctions, including criminal charges, civil claims for damages and dismissal proceedings, for any prohibited use of violence against children?
- Are staff appropriately qualified, eg are they carefully selected and recruited/ is there professional recognition of child care work/ are there specialist staff members such as psychologists available to children?
- Are staff directed to undertake their duties in a humane, committed, professional and fair manner, and without resort to violence or unlawful use of force or restraint?

9. Measures to prevent violence by adult detainees

- Are children prohibited from mixing with adults in any form of detention? (exceptions may be made for children who reach the age of majority whilst in detention, subject to appropriate supervision and risk management)
- What measures are taken to ensure girls are held separately from women?

10. Measures to prevent violence by other children

- Are children assessed on admission to determine the type and level of care required for each child?

- Are children placed within the facility according to the outcome of the assessment, in accordance with their particular needs, status and special requirements?

11. Measures to ensure accountability

- Do the staff of police or detention facilities, or other persons having access to them, have a legal obligation to report complaints or evidence of ill-treatment of children confined in the facility or police station?
- Which agencies or officials are responsible for investigating cases of violence against children in police and pre-trial detention? What are their responsibilities and obligations?
- What are the sentences attached to the offences of violence against children in detention?
- Does the law recognise the responsibility of the State to pay damages, or provide any other forms of compensation, to victims of violence?
- Are there gender-specific procedures for girls and boys who have been victims of torture and other ill-treatment, including with regard to access to redress for victims of rape and other sexual abuse?
- Does a child who claims to be a victim of violence have the right (standing) to take legal action in person, if his or her parents are unwilling to do so?

12. Provision for complaints

- What provision is made for children to make formal complaints regarding their treatment in police and pre-trial detention?
- Can others make complaints on their behalf? (parent/guardian/ appropriate adult etc)
- Do mechanisms ensure there are no reprisals against those who bring the complaint?
- Are there sanctions attached when breaches of law or policy are found via complaints?

13. Inspection and monitoring

- Is there a system guaranteeing regular independent inspection of places of detention?
- What is the percentage of police stations and pre-trial detention facilities that have received an independent inspection visit in the last recorded 12 months?
- Do children have confidential access to the team carrying out the inspection?
- Do inspection teams include women as well as men?

14. Data collection

- Is data relevant to violence against children collected in line with the recommended UNODC and UNICEF indicators, and disaggregated by gender?⁵⁷

15. Other relevant information

⁵⁷ UNODC and UNICEF, *Manual for the measurement of juvenile justice indicators*, United Nations: New York, 2007; and also indicators outlined in Detrick S, Abel G, Berger M, Delon, A and Meek R, *Violence against children in conflict with the law: A study on indicators and data collection in Belgium, England and Wales, France and the Netherlands*. Amsterdam, Defence for Children International, 2008.

- Are there any significant cases or jurisprudence concerning violence against children in police and pre-trial detention? If so please identify and summarise them.
- Are there any examples of measures taken by governments, civil society or others that have contributed to preventing or detecting violence against children in police and pre-trial detention and/or which have provided affected children with redress and rehabilitation or increased the likelihood of perpetrators being held accountable?
- Any other relevant information for this country?